

Application Number 10/603,237
Amendment Date 9/7/2004
Reply to Office action of 06/18/2004

REMARKS / ARGUMENTS

Claims 7, 8, 11, 14, 16, 17 and 20 have been amended. Claims 9, 12, 13, 18 and 19 have been cancelled. Claims 1-8, 10-11, 14-17 and 20 remain in the application.

Reexamination and reconsideration of the application, as amended, are requested.

Claims 8, 17 and 20 have been amended to limit servo angle switch to joystick switch. Basis for this limitation is found in cancelled claim 9.

Claims 7, 16 and 20 have been amended to limit slider type switch to slider switch.

Claims 8-9 and 17-20 stand rejected under 35 USC 112, first paragraph as failing to comply with the enablement requirement. The Official Action states that applicant fails to disclose details pertaining to the servo angle switch.

The rejection is overcome in amended claims by use of the limitation joystick switch.

Claims 7, 9 and 16-19 stand rejected under 35 USC 112, second paragraph as failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The Official Action states that the use of the word type in the rejected claims renders the claims unclear.

The rejection is overcome in the claims as amended by removal of the word type from the claims.

Claims 11 and 12 have been found by the examiner to be substantial duplicates of claims 2 and 3.

The rejection is overcome in claim 11 as amended by adding the limitations of claims 12 and 13 to claim 11.

Claims 1-7, 10-16 and 19 stand rejected under 35 USC 103(a), as being unpatentable over Lane (US Pat. No. 6,094,896) in view of Stout (US Pat. No. 5,477,665), further in view of Meehleder (5,040,360).

Application Number 10/603,237
Amendment Date 9/7/2004
Reply to Office action of 06/18/2004

The claims are believed to be unobvious because the modification as suggested by the office action would change the principle of operation of the Lane '896 reference. It has been held that if the proposed modification of the prior art changes the principle of operation of the prior art being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious, *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). The modification of servo in the manner suggested would change the principle of operation of the above stated reference in the following way. The Lane '896 reference teaches one end of an elongate flexible line 24 is coupled to one of the portions 23 of the other arm. The guide member 19 has a bore through which the flexible line 24 is extended so that the other end of the flexible line may be attached to the handle 2 of the lawn mower 1. In use, the flexible line 24 may be pulled by a user to allow the user to pivot the housing 11 towards the raised position as illustrated in figure 3, Col. 4, lines 31-39. The instant invention claims a servo to affect this movement. Additionally, Lane '896 does not teach the line feed switch of the instant invention.

The claims are believed to be unobvious because the modification as suggested by the office action would change the principle of operation of the Stout '665 reference. It has been held that if the proposed modification of the prior art changes the principle of operation of the prior art being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious, *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). The modification of servo in the manner suggested would change the principle of operation of the above stated reference in the following way. The Stout '665 reference teaches that the depending end of the strut shaft 38 substantially defines a hemispherical surface 40 contacting the surface of the earth 26, Col. 3, lines 13-15. The instant invention claims a servo connectable to a lawn mower deck.

The claims are believed to be unobvious because the modification as suggested by the office action would render the prior art unsatisfactory for its intended purpose. It has been held that if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification, *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). The

Application Number 10/603,237
Amendment Date 9/7/2004
Reply to Office action of 06/18/2004

modification of the servo in the manner suggested would not allow the prior art to work in the following way. The Meehleder '360 reference teaches that it is considered advantageous to raise it to an inoperative position in which it is automatically disengaged from the source of power, Col. 3, lines 38-41. The Meehleder '360 reference teaches that the drive belt must not leave the pulleys 31 and 33, but must slacken only sufficiently so that no drive is transmitted to the belt by the pulley 33, Col. 3, lines 65-69. The instant invention claims a servo, the instant invention does not utilize a drive belt, that can be disengaged from the power source and is thus would render the prior art unsatisfactory for its intended purpose.

The claims are believed to be unobvious because the modification as suggested by the office action would change the principle of operation of the Meehleder '360 reference. It has been held that if the proposed modification of the prior art changes the principle of operation of the prior art being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious, *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). The modification of servo in the manner suggested would change the principle of operation of the above stated reference in the following way. The Meehleder '360 reference teaches that it is considered advantageous to raise it to an inoperative position in which it is automatically disengaged from the source of power, Col. 3, lines 38-41. The Meehleder '360 reference teaches that the drive belt must not leave the pulleys 31 and 33, but must slacken only sufficiently so that no drive is transmitted to the belt by the pulley 33, Col. 3, lines 65-69.

In regard to claims Claims 1-7, 10-16 and 19, the combination of a servo, a line trimmer and a line feed switch was unsuggested among the prior art references. The need for the prior art references themselves to suggest that they can be combined is well known. E.g., as stated in *In re Sernaker*, 217 U.S.P.Q. 1, 6 (CAFC 1983):

“[P]rior art references in combination do not make an invention obvious unless something in the prior art references would suggest the advantage to be derived from combining their teachings.”

Application Number 10/603,237
Amendment Date 9/7/2004
Reply to Office action of 06/18/2004

The suggestion to combine the references should come from the prior art, rather than from applicant. As was forcefully stated in *Orthopedic Equipment Co. Inc. v. United States*, 217 U.S.P.Q. 193, 199 (CAFC 1983):

“It is wrong to use the patent in suit [here the patent application] as a guide through the maze of prior art references, combining the right references in the right way to achieve the result of the claims in suit [here the claims at issue]. Monday morning quarterbacking is quite improper when resolving the question of nonobviousness in a court of law [here the PTO].”

In the present case there is no suggestion in the references themselves that they can be combined. Thus the applicant submits that any combination of Lane '896, Stout '665 and Meehleder '360 is an improper one, absent any showing in the references themselves that they can or should be combined.

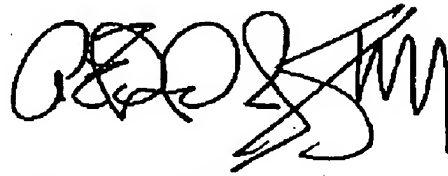
The dependent claims add additional novel features to the independent claims recited above and thus are submitted to be a-fortiori, patentable.

The subsidiary references, Reents, US Patent Number 5,966,914, and Fuelling et al. US Patent Number 4,281,505, have been studied, but are submitted to be less relevant than the relied upon references.

Application Number 10/603,237
Amendment Date 9/7/2004
Reply to Office action of 06/18/2004

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,



Anthony Edw. J Campbell
Reg. No. 39,619
Customer No. 30,245
Phone 512/306-0321

Attorney for Applicant

Date: September 7, 2004

Certificate of Facsimile

I hereby certify that this correspondence is being transmitted by fax to the United States Patent and Trademark Office on the date shown below.

Anthony Edw. J Campbell



Tuesday, September 07, 2004